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No. _____

In The
Supreme Court of the United States

ALEXANDER C. WELLS,
Petitioner,

v.

TENNESSEE BOARD OF REGENTS, TENNESSEE STATE UNIVERSITY, and JAMES HEFNER,
Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Tennessee

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Can a state wrongfully take property from a tenured state employee who possesses an undisputed property interest in employment without just compensation?

PARTIES TO THE PROCEEDINGS

Petitioner is Alexander C. Wells, a tenured professor of Biology formerly employed by Tennessee State University in Nashville, Tennessee.

Respondents are the Tennessee Board of Regents, a governmental entity of the State of Tennessee which oversees the college and university system of the State of Tennessee, excluding the University of Tennessee, Tennessee State University, an institution of higher education, and Tennessee State University's former President, James Hefner.

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Petitioner respectfully petitions for a Writ of Certiorari to review the judgment of the Supreme Court of Tennessee in this case.

OPINION BELOW

The Opinion below, Appendix A, is reported at 231 S.W.3d 912 (Tenn. 2007). Appendix B and Appendix C have not been published.

STATEMENT OF JURISDICTION

The judgment of the Supreme Court of Tennessee was entered on August 17, 2007 (Appendix A).

The jurisdiction of this Court is involved under 28 U.S.C. § 1257(2).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Fifth Amendment to the United States Constitution made applicable to the States by the Fourteenth Amendment.

The Fifth Amendment states in pertinent part:

> ...nor shall any person...be deprived of life, liberty, or property, without due process of law; ...without just compensation.

The Fourteenth Amendment states in pertinent part:

> No state shall make or enforce any law which shall abridge the privileges or immunities of

> citizens of the United States, nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny any persons within its jurisdiction the equal protection of the law.

The full text of Tennessee Code Annotated Section 49-8-304 (2002) states:

> Judicial Review.-(a) A faculty member who has been awarded tenure, and who has been dismissed or suspended for cause, may obtain de novo judicial review of the final decision by filing a petition in a Chancery Court having jurisdiction within thirty (30) days of the final decision, and copies of the petition shall be served upon the board and all parties of record.
>
> (b) Within forty-five (45) days after service of the petition, or within said further time allowed by the Court, the board shall transmit to the Court the original or a certified copy of the entire record of the proceeding.
>
> (c) The Chancellor shall reduce the Chancellor's findings of fact and conclusion of law to writing and make them parts of the record.

STATEMENT OF THE CASE

A. Proceedings Below

Alexander C. Wells, Ph.D. became a tenured professor at Tennessee State University in Nashville,

Tennessee in 1976. ER at 32.[1] In 1990, one of Dr. Wells' former students, filed a complaint against him claiming Dr. Wells had sexually harassed her. ER at 33. The University conducted an Internal Affairs investigation and determined there was sufficient evidence to uphold the charge. Dr. Wells appealed this finding. Dr. Wells was then given a hearing before an Administrative Law Judge. After a hearing, the Judge ruled that Dr. Wells had violated the University policy on sexual harassment. ER at 34. The University President, James Hefner, Ph.D., upheld the decision of the Judge. ER at 33. Immediately following Dr. Hefner's decision, tenure termination proceedings were instigated by the University. The University's Tenure Committee ruled that Dr. Wells' tenure should be terminated based upon the decision of the University President. ER at 33. Dr. Wells then appealed this decision to the Tennessee Board of Regents. The Chancellor of the Tennessee Board of Regents, Charles E. Smith, upheld the University's decision. ER at 33.

On July 12, 1995, pursuant to Tenn. Code Ann. § 49-8-304, Dr. Wells filed a petition in the Davidson County Chancery Court for judicial review of the termination decision. ER at 33. A trial was conducted by the Court on August 17, 1998, after which the Chancery Court issued a Memorandum and Order reversing the Tennessee Board of Regent's decision to terminate Dr. Wells. The Order in pertinent part states:

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[1] "ER" refers to Exhibits of the record filed in the Supreme Court of Tennessee.

> Accordingly, it is ORDERED that the Board's decision terminating Petitioner's employment, is reversed and this matter is remanded to the Board for further action in accordance with this Order.

ER at 12.

On September 10, 1998, the Board of Regents appealed the Chancellor's ruling to the Supreme Court of Tennessee. ER at 12. On October 5, 1998, while the appeal was pending, Dr. Wells filed a motion for cost and damages. ER at 85. On April 14, 1999, the Chancery Court entered an Order denying Dr. Wells' motion. The Chancery Court ruled that: (1) it no longer had jurisdiction to hear Dr. Wells' motion; and (2) that even if it had jurisdiction Dr. Wells waived his right to relief because he failed to litigate damages at trial and because the Court lacked the authority to award money damages pursuant to Tenn. Code Ann. § 49-8-304. ER at 22.

On June 19, 1999, Dr. Wells filed a claim before the Tennessee Claims Commission pursuant to Tenn. Code Ann. § 9-8-307. ER at 27. The Tennessee Legislature established the Claims Commission as a vehicle by which the citizens of the State of Tennessee could file suits against the State for various causes of action which are enumerated in the Claims Commission Statute. Dr. Wells sought back pay by way of a breach of employment contract. ER at 27-29. On December 20, 1999, during the pending of the Claims Commission action, the Supreme Court of Tennessee upheld the Chancery Court's decision. ER at 32.

Three years later on July 2002, the Claims Commission dismissed Dr. Wells' claim holding that there was no employment contract between the State and Dr. Wells. ER at 68. Dr. Wells appealed the Commission's decision to the Tennessee Court of Appeals. On August 8, 2007, the Court of Appeals upheld the Commission's decision ruling that Dr. Wells' case was governed by The Tennessee Teachers Tenure Act, Tenn. Code Ann. § 49-8-304. ER at 71. In effect, Dr. Wells' litigation efforts to regain his job and receive back pay for wrongful termination had gone full circle.

On November 15, 2004, Dr. Wells filed in the Chancery Court for Davidson County, Tennessee a Petition for Relief from the August 1998 Order on the basis that the Order had not awarded back pay. ER at 1-3. The Chancery Court issued an Order on March 15, 2005 granting Dr. Wells' motion, awarding back pay and benefits.[2] The Court Ordered the Board of Regents to "take appropriate further action to include calculation and payment of back wages and benefits plus interest, wrongfully denied the petitioner." ER at 87. In reaching its decision the Chancellor made the following pronouncement from the bench regarding Dr. Well's alleged failure to litigate damages:

> I don't concur with the position that the State takes that the Petitioner failed to address the issues during the proceeding. The procedure that's cited or was used left Judge Pellegren with the position of remanding it back, which is

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[2] The issue of reinstatement was not before the Court. ER at 86.

> typically what happens. You send it back to the administrative body to be complied with. They either have a hearing again or take the action that's supposed to occur.

TP 23.[3]

The Chancellor went further to address the lack of justice, or fairness that had occurred:

> Dr. Wells was ordered reinstated. He was entitled to his back pay as a result of that Order. It was never addressed. It was never awarded to him. There are many inconsistencies that exist through all of these proceedings. I can't remedy them all, but the end result is not fair to Dr. Wells who was the prevailing party.

TP at 24.

The State appealed. The Tennessee Court of Appeals, Middle District, upheld the Chancellor's decision in a split decision citing a thirty year old Tennessee Supreme Court case *Chapdelaine v. Torrence*, 532 S.W.2d 542, 550 (Tenn. 1976). In *Chapdelaine*, the Tennessee Supreme Court held that Tenn. Code Ann. § 49-8-304's predecessor to the teachers tenure statute, Tenn. Code Ann. § 49-1421 carried with it a coordinate right of a tenured teacher

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[3] "TP" refers to the transcript of the Chancery Court pronouncement from the bench filed with the Supreme Court of Tennessee.

to be awarded back pay in a wrongful dismissal case. The *Chapdelaine* Court held:

> The college and university teachers' tenure law, as incorporated in § 49-1421 T.C.A. and the regulations promotional there to, would be "a sounding brass or a tinkling cymbal", if it did not convey with it the coordinate right of a tenured teacher to seek back pay in wrongful dismissal cases.

Chapdelaine, 532 S.W.2d at 551.

Tenn. Code Ann. § 49-8-304's predecessor statute, Tenn. Code Ann. § 49-1421, read in pertinent part:

> ...After giving written notice of charges against any teacher, the board shall hold a hearing...In addition, a teacher shall be entitled to a judicial review of the action of the board for the same purposes and in the same manner provided by § 49-1417.

The Tennessee Court of Appeals held that Tenn. Code Ann. § 49-1417, which was repealed just after the *Chapdelaine* decision was published was revived as part of a broader statutory scheme. The Court reasoned that the Legislature was aware of the *Chapdelaine* decision when they passed the new statutory scheme and had it wanted to deny college

teachers back pay in wrongful dismissal cases it would have expressed a contrary intent. (Appendix B, p. 5.[4])

The Tennessee Supreme Court granted permission to appeal to the State on January 28, 2007.

On August 17, 2007, the Court held that Tenn. Code Ann. § 49-8-304 the statute passed by the Legislature in 1976, which replaced Tenn. Code Ann. § 49-1421 did not authorize any monetary relief for wrongfully dismissed, tenured college professors.[5]

B. The Effect of the Wells Decision on Tenured College and University Professors in the State of Tennessee

Up and until August 17, 2007, tenured college and university professors were guaranteed recompensation for property (wages and benefits) wrongfully taken from them by the State of Tennessee. Presently, if a tenured professor is accused of committing an act for which he can be terminated, and is terminated, later to be *found wrongfully* dismissed, he has no remedy. The *Wells* case decision denies him the right to be given back his property wrongfully taken by the State. Dr. Wells was wrongfully terminated in 1990, and was taken off the payroll in 1995. Since that time he has been without pay and benefits from the State of

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[4] The Honorable Patricia J. Cottrell dissented, holding that Tenn. Code Ann. § 49-8-301 dealt with tenured teachers in the college and university system and unlike high school teachers the statute did not include back pay award.

[5] The issue of reinstatement was not before the Court.

Tennessee. This is a bleak scenario for tenured college and university professors teaching in Tennessee. While the *Wells* decision did not address reinstatement it is arguable that the Tennessee Supreme Court would further expand its holding and deny reinstatement as well.

REASON FOR GRANTING THE WRIT

I. THE DECISION BY THE SUPREME COURT OF TENNESSEE MEANS THAT THE STATE OF TENNESSEE HAS ENACTED A LAW WHICH ALLOWS IT TO DEPRIVE ONE OF ITS CITIZENS OF PROPERTY WITHOUT JUST COMPENSATION

The *Wells* decision cannot be reconciled with the Fifth Amendment of the United States Constitution. Wells was a tenured employee who possessed property rights pursuant to the Tennessee Teacher Tenure Act, Tenn. Code Ann. § 49-8-101 *et seq.* The caption of Senate Bill No. 2101 explains in pertinent part:

> AN ACT to repeal Tennessee Code Annotated Section 49-1421 and 49-1422; to authorize the Board of Regents to promulgate a tenure policy for faculty at institutions within the State university and community college systems of Tennessee; to authorize the Board to define the nature of tenure and rights and responsibility thereunder;...to authorize the Board to provide for adequate cause for termination of faculty

with tenure, and the procedures for said termination and to provide for judicial review.

1976 Tenn. Pub. Act. 1275.

This Court in *Bishop v. Wood*, 426 U.S. 346, 98 S.Ct. 2074, 48 L.Ed.2d 684 (1976) has held that The Fifth Amendment's protection of due process is available to citizens with property interests. Dr. Wells as a tenured college professor had such a legitimate claim to a property interest. *See Board of Regents v. Roth*, 408 U.S. 564, 577, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972).

While this is not a preemption case, this Court in *Hines v. Davidowitz*, 312 U.S. 52, 67, 61, S.Ct. 399, 85 L.Ed.2d 581 (1941) held that "when a state law stands as an obstacle to the accomplishment and execution of the full purpose and objective of Congress that law is preempted by the latter." This decision is analogous in principle to the instant case.

Tennessee has passed a law which grants judicial review to tenured college and university professors but does not give them just compensation if their property was taken from them wrongfully.

II. THE QUESTION PRESENTED IS IMPORTANT

The Petitioner has found no reported decision by this Court which is directly on point with facts and law of this case. But the facts of this case are of sufficient importance that this Court should grant certiorari for the following reasons: (1) at present the Fifth

Amendment rights of all tenured college and university teachers in Tennessee has been negated; and (2) this Court is the protector of the Constitutional rights enjoyed by all citizens of this land. Respectfully, this Court should step in between the State of Tennessee and its citizens and provide them the protection of the United States Constitution. To allow this law to deny wrongfully terminated tenured college professors just compensation for their property wrongfully taken by the State is an affront to the Constitutional guarantees and principles of our democracy.

CONCLUSION

For the reasons set forth above, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A

SUPREME COURT OF TENNESSEE
AT NASHVILLE

No. M2005-00938-SC-R11-CV

[Filed August 17, 2007]

ALEXANDER C. WELLS	)
	)
v.	)
	)
TENNESSEE BOARD OF REGENTS,	)
TENNESSEE STATE UNIVERSITY,	)
AND JAMES HEFNER.	)
	)

Appeal by Permission from
the Court of Appeals, Middle Section
Chancery Court for Davidson County
No. 95-2144-II. Carol McCoy, Chancellor

We accepted review of this case to decide whether a tenured university professor whose employment by the State was wrongfully terminated may recover back pay and lost benefits pursuant to Tennessee Code Annotated section 49-8-304. While the trial court initially found there was no statutory authority to grant monetary damages, the plaintiff was awarded back wages, lost benefits, and interest. The Court of

Appeals affirmed. Because there is no statutory authority for the award, however, the judgments of the trial court and the Court of Appeals must be reversed and the cause dismissed.

Tenn. R. App. P. 11 Appeal by Permission; Judgment of the Court of Appeals Reversed & Case Dismissed

GARY R. WADE, J., delivered the opinion of the court, in which WILLIAM M. BARKER, C.J., JANICE M. HOLDER and CORNELIA A. CLARK, JJ., joined.

OPINION

Factual and Procedural Background

In 1958, Alexander Wells ("the Plaintiff") was employed as a lab assistant at Tennessee State University ("TSU"). As a part of his duties at the school, he conducted research and taught several biology-related courses each semester. In 1985, the Plaintiff was granted tenure.

In 1990, a student filed a complaint with TSU alleging that the Plaintiff had sexually harassed her. In accordance with the policy of the Tennessee Board of Regents, an administrative law judge conducted an evidentiary hearing and determined that the Plaintiff had, in fact, violated the sexual harassment policy. TSU subsequently conducted proceedings to determine if adequate grounds existed to terminate employment. An internal hearing committee found that the Plaintiff had "capricious[ly] disregard[ed] . . . accepted

standards of professional conduct," a statutory ground for dismissal, and recommended termination. *See* Tenn. Code Ann. § 49-8-302(5) (2002). TSU President, James Hefner, who was joined as a defendant in his official capacity, terminated the employment of the Plaintiff in 1995. An appeal to the Board of Regents, also a named defendant, was unsuccessful.

The Plaintiff then filed a petition seeking judicial review of the decision to terminate his employment. After considering the record and testimony of the Plaintiff's witnesses, the Davidson County Chancery Court determined that the evidence did not sufficiently establish any violation of the professional standards of conduct and reversed the decision of the Tennessee Board of Regents. Upon review, this Court affirmed the ruling of the chancellor.[1] *See Wells v. Tenn. Bd. of Regents*, 9 S.W.3d 779 (Tenn. 1999). The issue of damages was not before us in the prior appeal.

In 1998, while the first appeal was pending, the Plaintiff filed a motion in the chancery court seeking monetary damages. The chancellor ruled that the trial court no longer had jurisdiction over the case because of the appeal and concluded that, even if there was jurisdiction, the Plaintiff had waived his right to relief by failing to seek damages at trial. The chancellor also ruled that the State was protected from liability by the doctrine of sovereign immunity.

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[1] At that time, Tennessee Code Annotated section 49-8-304(d) (1990) authorized a direct appeal to this Court.

A few months later, the Plaintiff filed an action against the State in the Tennessee Claims Commission alleging breach of contract. He sought $ 600,000 in damages for back pay, attorney's fees, lost benefits, and litigation costs incurred since the date of his dismissal. The Claims Commission dismissed the action because the Plaintiff failed to prove the existence of a contract. The Court of Appeals affirmed. *See Wells v. State*, No. M2002-01958-COA-R3-CV, 2003 Tenn. App. LEXIS 559, 2003 WL 21849730 (Tenn. Ct. App. Aug. 8, 2003). As to the claim for damages, the Court of Appeals observed that "[i]t is a mystery to us why the claim for back pay was not pursued in the original action in the chancery court or why the order overruling the motion for back pay was not appealed. But those issues are not before us now." 2003 Tenn. App. LEXIS 559, [WL] at *4.

Undeterred by a lack of success in either the chancery court or the Claims Commission, the Plaintiff filed a motion in 2004 under Rule 60.02(5) seeking relief from the chancellor's previous order of dismissal of the claim for damages.[2] The chancellor granted the motion and directed the Board of Regents to pay the

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[2] Rule 60.02 of the Tennessee Rules of Civil Procedure provides in part: "On motion and upon such terms as are just, the court may relieve a party . . . from a final judgment . . . for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) fraud . . . misrepresentation, or other misconduct of an adverse party; (3) the judgment is void; (4) the judgment has been satisfied, released or discharged . . .; or (5) any other reason justifying relief from the operation of the judgment."

Plaintiff back wages, lost benefits, and interest stemming from his termination. The chancellor reasoned that because the issues of reinstatement and back pay were never addressed, "the end result" from the prior litigation was "not fair."

In a divided decision, the Court of Appeals affirmed the award. The majority concluded that (1) the chancery court did not abuse its discretion by granting Rule 60 relief to the Plaintiff, and (2) even though Tennessee Code Annotated section 49-8-304 does not expressly provide for an award of back pay, the enactment of the statute waived the State's sovereign immunity in that regard.

Analysis

The General Assembly has authorized the Tennessee Board of Regents to promulgate a tenure policy for faculty within the state university and college system to "ensure academic freedom and provide sufficient professional security to attract the best qualified faculty available." Tenn. Code Ann. § 49-8-301(a) (2002). The Board is also charged with the responsibility of providing "for the termination of faculty with tenure by institutions for adequate cause . . . ." Tenn. Code Ann. § 49-8-301(b)(3) (2002). Among other proper grounds, "adequate cause" is defined as falsification of qualifications, incompetence or dishonesty, the willful failure to perform duties or assignments, conviction of a felony, excessive use of drugs or alcohol, or, as was initially found in this case, the capricious disregard of accepted standards of

professional conduct. *See* Tenn. Code Ann. § 49-8-302 (2002).

In the event a tenured faculty member is dismissed based on the grounds identified in section 49-8-302, judicial review is available under section 49-8-304:

> **Judicial review**. - (a) A faculty member who has been awarded tenure, and who has been dismissed or suspended for cause, may obtain de novo judicial review of the final decision by filing a petition in a chancery court having jurisdiction within thirty (30) days of the final decision, and copies of the petition shall be served upon the board and all parties of record.
>
> (b) Within forty-five (45) days after service of the petition, or within such further time allowed by the court, the board shall transmit to the court the original or a certified copy of the entire record of the proceeding.
>
> (c) The chancellor shall reduce the chancellor's findings of fact and conclusions of law to writing and make them parts of the record.

Tenn. Code Ann. § 49-8-304 (2002).

Our task in this appeal is to determine whether section 49-8-304 authorizes an award of back pay and lost benefits to a tenured faculty member who has been wrongfully discharged. In performing this analysis, we are guided by the established rule that the construction of a statute is a question of law. *Sallee*

v. Barrett, 171 S.W.3d 822, 825 (Tenn. 2005). The standard of appellate review for questions of law is de novo. *Leab v. S & H Mining Co.*, 76 S.W.3d 344, 348 (Tenn. 2002); *Bryant v. Genco Stamping & Mfg. Co.*, 33 S.W.3d 761, 765 (Tenn. 2000). We must presume that every word in a statute has meaning and purpose; thus, each word should be given full effect if the obvious intention of the General Assembly is not violated by so doing. *In re C.K.G.*, 173 S.W.3d 714, 722 (Tenn. 2005). If the statutory language is clear and unambiguous, we apply its plain meaning in its normal and accepted use and without a forced interpretation that would limit or expand the statute's application. *Eastman Chem. Co. v. Johnson*, 151 S.W.3d 503, 507 (Tenn. 2004). When called upon to construe a statute, courts must take care not to unduly restrict a statute's application or conversely to expand its coverage beyond its intended scope. *Houghton v. Aramark Educ. Res., Inc.*, 90 S.W.3d 676, 678 (Tenn. 2002). If, however, a statute is ambiguous, capable of conveying more than one meaning, we look to the entire statutory scheme to determine legislative intent. *Sallee*, 171 S.W.3d at 828.

The Plaintiff argues that Tennessee Code Annotated section 49-8-304 permits an award of monetary damages for wrongful termination and submits that the State has, therefore, waived its sovereign immunity as to awards of back pay and lost benefits. In response, the defendants, the Board of Regents, TSU, and Dr. Hefner, point out that the section contains no language indicating the legislature meant to provide for an award of monetary damages in

circumstances like these and maintain that they are protected by sovereign immunity.

Historically, the doctrine of sovereign immunity has provided that a sovereign governmental entity cannot be sued in its own courts absent legislative consent. *Hawks v. City of Westmoreland*, 960 S.W.2d 10, 14 (Tenn. 1997); *Williams v. State*, 139 S.W.3d 308, 311 (Tenn. Ct. App. 2004); *see also* Lewis L. Jaffe, Suits Against Governments and Officers, Sovereign Immunity, 77 Harv. L. Rev. 1 (1963). Article 1, section 17 of the Tennessee Constitution does, however, authorize the General Assembly to waive sovereign immunity: "Suits may be brought against the State in such manner and in such courts as the Legislature may by law direct." Further, Tennessee Code Annotated section 20-13-102(a) (1994) prohibits courts from entertaining suits against the State, absent waiver, and requires dismissal on proper motion. The doctrine of sovereign immunity, therefore, has both a constitutional and statutory basis. *Jones v. L & N R.R. Co.*, 617 S.W.2d 164, 170 (Tenn. Ct. App. 1981).

In Tennessee, the principal case on the subject at issue is *State ex rel. Chapdelaine v. Torrence*, 532 S.W.2d 542 (1976), wherein a tenured university professor was awarded back pay for breach of his employment contract following his wrongful discharge. At the time that case was decided, Tennessee Code Annotated section 49-1421 (1966) provided that tenured college and university professors were entitled to "judicial review of [termination decisions] for the same purpose and in the same manner provided in section 49-141[illegible]." Section 49-1417 was part of the

statutory scheme applicable to elementary and secondary school teachers in local school systems, for whom the courts had "consistently approved awards of back pay." *Chapdelaine*, 532 S.W.2d at 550; *see also Wagner v. Elizabethton City Bd. of Educ.*, 496 S.W.2d 468 (Tenn. 1973); *Jeffers v. Stanley*, 486 S.W.2d 737 (Tenn. 1972). While the State relied upon the defense of sovereign immunity in *Chapdelaine*, this Court awarded back pay, observing that the "college and university teachers' tenure law, as incorporated in [section] 49-1421, . . . would be 'as a sounding brass, or a tinkling cymbal' if it did not carry with it the coordinate right of a tenured teacher to seek back pay in wrongful dismissal cases." *Chapdelaine*, 532 S.W.2d at 551.

In 1976, however, the legislature repealed section 1421, thereby severing the statutory connection between actions of tenured college and university faculty and those of tenured elementary and secondary teachers in local school systems. As expressed by Judge Patricia Cottrell in her dissent to the opinion of the Court of Appeals, the "basis for the *Chapdelaine* court's reliance on authority governing public school teachers in local systems no longer exists."

The present statute governing state college and university professors, Tennessee Code Annotated section 49-8-304 (2002), makes no mention of back pay or other monetary relief. In contrast, section 49-5-511(a)(3) (2002), the statute applicable to tenured school teachers on the elementary and secondary level, provides that if the teacher is "vindicated or reinstated, the teacher shall be paid the full salary for

the period during which the teacher was suspended." That the legislature did not include any such remedy for tenured faculty at the college or university level in section 304 speaks to the issue. Had the legislature intended for a wrongfully terminated college or university professor to receive monetary damages, the statute should have included that provision. When a statute is not ambiguous, "we need only to enforce the statute as written, with no recourse to the broader statutory scheme, legislative history, historical background, or other external sources of the Legislature's purpose." *Abels v. Genie Indus. Inc.*, 202 S.W.3d 99, 102 (Tenn. 2006). Statutes may be construed *in pari materia* in order to ascertain their purpose or intent. *Lyons v. Rasar*, 872 S.W.2d 895, 897 (Tenn. 1994). When considering their meaning, this Court may employ the Latin maxim, *express unius est exclusio alterius*, which translates as "the expression of one thing implies the exclusion of . . . things not expressly mentioned." *Limbaugh v. Coffee Med. Ctr.*, 59 S.W.3d 73, 84 (Tenn. 2001). The application of these guidelines suggests that the General Assembly has chosen not to waive sovereign immunity under these circumstances. Moreover, we have held that any abrogation of the immunity doctrine by the legislature must be set out in "plain, clear, and unmistakable terms." *Northland Ins. Co. v. State*, 33 S.W.3d 727, 731 (Tenn. 2000). In summary, the Plaintiff has no remedy for monetary relief.

In the alternative, the defendants argue that the chancery court abused its discretion by granting a Rule 60 motion six years after denying relief. Further, the defendants maintain that the Plaintiff waived his right

to relief in the chancery court by filing a breach of contract claim in the Claims Commission. As authority, the defendants rely upon Tennessee Code Annotated section 9-8-307(b) (1999), which provides that "[c]laims against the state . . . shall operate as a waiver of any cause of action, based on the same act or omission, which the claimant has against any state officer or employee." In light of our conclusion that section 49-8-304 does not authorize an award of monetary relief, we decline to address these ancillary issues.

Conclusion

Because section 49-8-304 does not authorize an award of back pay and lost benefits to a wrongfully discharged tenured faculty member of a state college or university, the State is protected by sovereign immunity. Accordingly, the judgments of the trial court and the Court of Appeals are reversed, and the cause is dismissed. The costs on appeal are taxed against the Plaintiff, for which execution may issue if necessary.

/s/ Gary R. Wade
GARY R. WADE, JUSTICE

JUDGMENT

This cause came to be heard upon the entire record from the Court of Appeals, application for permission to appeal having been heretofore granted, briefs and argument of counsel; and upon consideration thereof, this Court is of the opinion that Tennessee Code

Annotated section 49-8-304 does not authorize an award of monetary damages to a wrongfully discharged tenured faculty member of a post-secondary institution of this state, and the State is protected by sovereign immunity.

In accordance with the opinion filed herein, it is therefore ORDERED that the judgments of the chancery court and the Court of Appeals are reversed and the cause is dismissed. Costs of this appeal are adjudged against the plaintiff, Alexander C. Wells.

APPENDIX B

COURT OF APPEALS OF TENNESSEE AT NASHVILLE

No. M2005-00938-COA-R3-CV

[Filed September 27, 2006]

ALEXANDER C. WELLS	)
	)
v.	)
	)
TENNESSEE BOARD OF REGENTS, ET AL.	)
	)

Following termination of his employment, a professor at Tennessee State University prevailed in this protracted tenure termination proceeding. On remand to Chancery Court following a successful appeal, the professor filed a Tenn. R. Civ. P. 60.02 motion for relief from the pre-appeal judgment to assert a claim for back pay. The Chancellor granted relief and awarded back pay, which the defendants challenge on two grounds. They contend the court abused its discretion by awarding Rule 60 relief, and because back pay is not specifically authorized by statute, an award of back pay violates the sovereign immunity doctrine. Finding no error, we affirm.

Tenn. R. App. P. 3 Appeal as of Right;
Judgment of the Chancery Court Affirmed.

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which WILLIAM B. CAIN, J., joined. PATRICIA J. COTTRELL, J., filed a dissenting opinion.

OPINION

Alexander C. Wells was a tenured professor at Tennessee State University in 1990 when a student filed a complaint accusing him of sexual harassment. Following an internal investigation, the investigating officer at the university determined there was sufficient evidence to find that Professor Wells violated the university's sexual harassment policy. Professor Wells appealed that finding. An administrative law judge conducted a full evidentiary hearing and determined that Professor Wells violated the university's sexual harassment policy. That decision was then submitted to the university president, who upheld the finding.

Thereafter, tenure termination proceedings were initiated. The university's tenure committee ruled that Professor Wells's tenure should be terminated. Professor Wells appealed the decision of the tenure committee to the university president, who approved the committee's decision. Professor Wells then appealed the university's decision to the Tennessee Board of Regents (Board). Chancellor Charles E. Smith conducted a review after which he concurred with the university's decision. Professor Wells appealed the

Chancellor's decision to the Board, which denied the appeal. Following the Board's decision, Professor Wells initiated this action by filing a Petition for Review with the Davidson County Chancery Court. The Tennessee Board of Regents, Tennessee State University, and James Hefner, President of the university, were the named defendants. The Chancery Court conducted a hearing following which it reversed the Board's decision to terminate Professor Wells. An order to that effect was entered August 17, 1998. The defendants appealed. Ultimately, the Tennessee Supreme Court affirmed the decision of the Chancery Court, following which the case was remanded.

On remand, Professor Wells filed a Rule 60.02(5) Motion for Relief from the pre-appeal order. The purpose of the motion was to enable him to assert a claim for back pay for the time he was wrongfully terminated. The Chancellor granted the Rule 60 motion and awarded Professor Wells back pay plus prejudgment interest.

The defendants present two issues on appeal. One, they contend the court abused its discretion by granting Professor Wells' motion for Rule 60 relief. Two, they contend the award of back pay, which is not specifically authorized by statute, violates the sovereign immunity doctrine.

TENN. R. CIV. P. 60.02 RELIEF

The function of Tenn. R. Civ. P. 60.02 is "to strike a proper balance between the competing principles of finality and justice." *Jerkins v. McKinney*, 533 S.W.2d

275, 280 (Tenn. 1976). It is "an escape valve from possible inequity that might otherwise arise from the unrelenting imposition of the principle of finality imbedded in our procedural rules." *Thompson v. Firemen's Fund Ins. Co.*, 798 S.W.2d 235, 238 (Tenn. 1990). Tenn. R. Civ. P. 60.02 provides in part:

> On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (3) the judgment is void; (4) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that a judgment should have prospective application; or (5) any other reason justifying relief from the operation of the judgment.

A motion for relief pursuant to Tenn. R. Civ. P. 60.02 addresses itself to the sound discretion of the trial judge. *Underwood v. Zurich Ins. Co.*, 854 S.W.2d 94, 97 (Tenn. 1993). Our scope of review of such a decision is to determine if that discretion was abused. *Id.*; *Day v. Day*, 931 S.W.2d 936, 939 (Tenn. Ct. App. 1996).

When we review a trial court's decision under the abuse of discretion standard, we will uphold the trial

court's ruling "so long as reasonable minds can disagree as to the propriety of the decision made." *Franklin Capital Assocs., L.P. v. Almost Family, Inc.*, 194 S.W.3d 392, 405 (Tenn. Ct. App. 2005)(citing *Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (Tenn. 2001)).

Considering the equities of this case, we have concluded reasonable minds could disagree as to the propriety of the Chancellor's decision. Accordingly, we find no error with the Chancellor's exercise of her discretion by avoiding the possible inequity that may have arisen had Professor Wells been procedurally deprived of the opportunity to assert a claim for back pay. Therefore, we affirm the Chancellor's discretionary decision to grant Rule 60.02(5) relief to seek back pay.

SOVEREIGN IMMUNITY

This case comes to us following the determination that Professor Wells was wrongfully terminated as a tenured professor at Tennessee State University, for which he was awarded back pay, benefits, and prejudgment interest for the period of time he was wrongfully terminated. The defendants contend the award violates the sovereign immunity doctrine.

The relevant statute, Tenn. Code Ann. § 49-8-304, does not expressly provide for the award of back pay in the event a university faculty member who had been awarded tenure is "vindicated or reinstated" following a review of the professor's dismissal or suspension for cause. In pertinent part the statute provides, "a faculty member who has been awarded tenure, and who has

been dismissed or suspended for cause, may obtain de novo judicial review of the final decision. . . ." Tenn. Code Ann. § 49-8-304(a).

The sovereign immunity doctrine provides that the state, as a sovereign entity, is immune from suit except to the extent that it consents to be sued. *Brown v. State*, 783 S.W.2d 567, 571 (Tenn. Ct. App. 1989)(citing *Brewington v. Brewington*, 215 Tenn. 475, 387 S.W.2d 777 (1965)). The right to file a cause of action against the state originates from the Constitution of Tennessee, which states "[s]uits may be brought against the State in such manner and in such courts as the Legislature may by law direct." Tenn. Const. art. I, § 17. "A statute permitting suit against the State must be strictly construed, and jurisdiction cannot be enlarged by implication." *Brown*, 783 S.W.2d at 571 (citing *Stokes v. Univ. of Tenn.*, 737 S.W.2d 545 (Tenn. Ct. App. 1987)).

The statute at issue does not expressly provide a remedy for back pay and benefits; thus, it would appear that Professor Wells' claim for back pay and benefits is barred by the sovereign immunity doctrine. That argument fails, however, in light of the Supreme Court's holding in *State ex rel. Chapdelaine v. Torrence*, 532 S.W.2d 542, 550 (Tenn. 1976). In *Chapdelaine*, the Supreme Court was faced with the same argument presented here, that an award of back pay to this professor violated principles of sovereign immunity. The Chancellor awarded the tenured professor the sum of $ 12,500 for back pay, which the Supreme Court found proper. As the Court explained,

> While the Chancellor treated this as "damages", we think that is an unfortunate characterization. The word "damages" connotes a recovery for hurt, harm or injury inflicted upon an injured party. We are not dealing here with damages in the conventional sense of the word. The award was simply an enforced restitution of unpaid wages to the extent they were not mitigated. In common parlance this was an award for back pay.

Chapdelaine, 532 S.W.2d at 550. The Court went on to defuse the sovereign immunity defense, explaining:

> We are not impressed with the insistence that this action against these defendants, as state officials engaged in the pursuit of their official duties, is a suit against the state and, therefore, is barred by sovereign immunity.
>
> Article 1, Section 17 of the Constitution of Tennessee provides in pertinent part: *Suits may be brought against the State* in such manner and in such courts as the Legislature may be law direct. (emphasis in original)
>
> Section 49-1417 T.C.A. gives the Chancery Court jurisdiction of actions brought by tenured teachers to review their dismissal.
>
> Cities and counties are arms of the state and such immunity as they claim is wholly derivative from the state itself, and this Court has consistently approved awards of back pay as

> to teachers in city and county school systems. *See e.g.,Jeffers v. Stanley,* 486 S.W.2d 737; *Wagner v. Elizabethton City Board of Education*, 496 S.W.2d 468 (Tenn. 1973).

Chapdelaine, 532 S.W.2d at 550. Upon the filing of a Petition to Rehear by the state, the Supreme Court reaffirmed its holding concerning the sovereign immunity defense, explaining:

> The State's petition insists that we failed to considers 20-1702 T.C.A. relating to the sovereign immunity of the State. Section VII of the main opinion discusses this issue. We reiterate that "we are not impressed with the insistence (that this) is a suit against the State and, therefore, is barred by sovereign immunity."
>
> The college and university teachers' tenure law, as incorporated in § 49-1421 T.C.A., and the regulations promulgated pursuant thereto, would be "as sounding brass, or a tinkling cymbal", if it did not carry with it the coordinate right of a tenured teacher to seek back pay in wrongful dismissal cases.

Chapdelaine, 532 S.W.2d at 551.

The defendants have correctly noted that the statute at issue in *Chapdelaine* was repealed in 1976. Ordinarily, that would be significant. We note, however, the statute was repealed only to be revived as part of a broader statutory scheme. That scheme

pertained to the implementation of a State University and Community College System, with the governance, management and control of the state universities and community colleges vested in one of the defendants, the Board of Regents. Tenn. Code Ann. § 49-8-101, *et. seq*. The caption of Senate Bill No. 2101, the 1976 legislation repealing the *Chapdelaine* statute, explained it was

> AN ACT to repeal Tennessee Code Annotated, Sections 49-1421 and 49-1422; to authorize the Board of Regents to promulgate a tenure policy for faculty at institutions withing the State University and Community College System of Tennessee; to authorize the Board to define the nature of tenure and rights and responsibilities thereunder; . . . *to authorize the Board to provide for adequate cause for termination of faculty with tenure, and the procedures for such termination ' and to provide for judicial review.* (emphasis added)

1976 Tenn. Pub. Acts 1275.

As we know from reading *Chapdelaine*, the former statute authorized and required the state board of education - the predecessor to the Board of Regents - to establish a system of tenure for college and university teachers and promulgate rules and regulations for a tenure system. Furthermore, that statute provided that the teacher "*shall be entitled to a judicial review of the action of the board* for the same purposes and in the same manner provided by s 49-1417." *Chapdelaine*, 532 S.W.2d at 545. (emphasis

added) The new statutory scheme provided that a faculty member who had been awarded tenure, and who was dismissed for cause, may obtain similar relief to that available in the old statute, that being de novo judicial review by filing a petition in chancery court. The statute in effect today is also substantially similar. It reads:

> A faculty member who has been awarded tenure, and who has been dismissed or suspended for cause, may obtain de novo judicial review of the final decision by filing a petition in a chancery court. . . .

Tenn. Code Ann. § 49-8-304(a).

The defendants also point to Tenn. Code Ann. § 49-5-511, which applies to teachers in the elementary and secondary schools, and specifically provides for the award of back pay in the event that a teacher is "vindicated or reinstated" as a result of an investigation into the suspension of the teacher by the director of schools. Tenn. Code Ann. § 49-5-511(a)(3). They contend Tenn. Code Ann. § 49-5-511 shows a legislative intent contrary to the holding in *Chapdelaine*. We are unpersuaded by the argument for two reasons. One, the statute does not pertain to college and university professors. Two, we view the defendants suggestion as at best faint evidence of legislative intent and are certain the General Assembly would have been more direct. It has had thirty years to express a contrary intent, and we find it has declined to do so.

The *Chapdelaine* court awarded the tenured professor back pay when faced with a substantially similar statute as presented here. We find no uncertainty in the Supreme Court's holding in *Chapdelaine*, and we are obliged to follow the lead of the Tennessee Supreme Court.

The judgment of the trial court is affirmed, and this matter is remanded with costs of appeal assessed against the defendants.

/s/ Frank G. Clement, Jr.
FRANK G. CLEMENT, JR., JUDGE

PATRICIA J. COTTRELL, J., dissenting.

It is elementary that a statute waiving sovereign immunity must clearly do so, and any statute purporting to waive that immunity must be strictly construed. Courts are to determine to what extent and in what ways the Legislature has allowed suits against the State. The statute allowing the suit herein, Tenn. Code Ann. § 49-8-304, authorizes *de novo* judicial review of the termination or suspension of tenured state university professors. The statute does not mention or refer to backpay or the award of damages. This court cannot imply such a remedy or interpret the statute so as to enlarge the waiver of sovereign immunity beyond that intended by the legislature.

Mr. Wells bases his entitlement to backpay on *Chapdelaine*. The discussion in *Chapdelaine* of the award of backpay in light of the sovereign immunity of

the State is very limited. It appears, however, that the Court found a waiver of immunity in Tenn. Code Ann. § 49-1417 as it existed at that time. This reliance is explained by language in then-existing Tenn. Code Ann. § 49-1421, quoted in the *Chapdelaine* opinion, that stated that tenured college and university teachers were entitled to judicial review of board decisions "for the same purposes and in the same manner provided by § 49-1417." *See also Eads v. Humphries*, 562 S.W.2d 805, 806 (quoting the statute).

At that time, Tennessee Code Annotated § 49-1417 was part of the statutory scheme applicable to tenured teachers in local school systems. Thus, at the time of the employment action at issue in *Chapdelaine*, tenured teachers at colleges governed by the State Board of Education were entitled to a judicial review co-extensive in scope and remedy with that available to tenured teachers in local elementary and secondary schools. The *Chapdelaine* court, finding that Tenn. Code Ann. § 49-1417 provided jurisdiction of actions brought by tenured teachers to review their dismissal, noted that the Court had "consistently approved awards of back pay as to teachers in the city and county school systems." *Chapdelaine*, 532 S.W.2d at 550.

In 1976, however, the General Assembly severed the connection between actions regarding tenured college and university professors in Board of Regents schools from those regarding elementary and secondary teachers in local school systems. 1976 Tenn. Pub. Acts, ch. 839. That legislation is now codified at Tenn. Code Ann. § 49-8-301, *et seq.* (dealing with

tenure for faculty at institutions within the state university and community college system, governed by the State Board of Regents). Thus, the basis for the *Chapdelaine* court's reliance on authority governing public school teachers in local systems no longer exists.

The current Board of Regents statutes provide for *de novo* judicial review of the dismissal or suspension of a tenured faculty member. Tenn. Code Ann. § 49-8-304. Thus, the court's review is limited to the propriety of the Board's decision to dismiss or suspend the tenured professor. Nothing in that statute, or the statute regarding the Board's adoption of policies for "the termination of faculty with tenure," Tenn. Code Ann. § 49-8-301(b)(3), or the statutes regarding procedures for and review of such actions, Tenn. Code Ann. §§ 49-8-302 through - 304, authorizes the payment or award of backpay. An action for judicial review of the Board's decision does not include the remedies available in a 42 U.S.C. § 1983 action or one brought under various state and federal statutes prohibiting employment discrimination.

There is certainly an argument that the *Chapdelaine* court did not rely exclusively on Tenn-Code Ann. § 49-1417. The opinion includes language indicating that judicial review of a termination decision would be less than satisfactory or effective if backpay were not available. Of course, a decision that the Board's termination decision must be overturned brings other concrete relief. In any event, the doctrine of sovereign immunity precludes full monetary relief against the State in many situations. Exceptions to

that doctrine must be explicit and have not generally been based on concepts of equity or implication.

While I understand the majority's adherence to *Chapdelaine*, I would interpret that opinion as relying primarily on a statutory scheme that has been changed, effectively eliminating the basis for the backpay ruling. It appears to me that the proper interpretation of *Chapdelaine* and the availability of an award of backpay against the State under a statute that is silent as to that remedy are issues that need to be addressed by the Tennessee Supreme Court.

/s/ Patricia J. Cottrell
PATRICIA J. COTTRELL, JUDGE

APPENDIX C

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE

No. 95-2144-11

[Filed March 15, 2005]

ALEXANDER C. WELLS, Petitioner,	)
v.	)
TENNESSEE BOARD OF REGENTS, TENNESSEE STATE UNIVERSITY, and JAMES HEFNER, Respondents.	)

ORDER

This case came before the Court on February 11, 2005, upon motion by the Petitioner pursuant to Tenn. R. Civ. P. 60.02(5) for relief from the Court's Order dated August 17, 1998. After reviewing the record, briefs of the parties and considering the arguments of counsel made in open court, the Court holds that the petitioner's motion is well taken.

Rule 60.02(5) states that the Court may relieve a party from "any other reason justifying relief from the operation of the judgment." The Court finds that there is reason to warrant the granting of relief pursuant to Rule 60.02(5). The August 17, 1998 order states:

> Accordingly, it is ORDERED that the Board's decision terminating Petitioner's employment is reversed and this matter is remanded to the Board for further action in accordance with this Order.

The Respondent made a timely appeal in 1998 to the Tennessee Supreme Court.

On October 5, 1998, the Petitioner filed a motion for costs and damages. On November 5, 1998, Respondents answered the Petitioner's motion. Respondents took the position that this Court did not have authority to award damages pursuant to Tenn. Code Ann. § 9-8-307 *et seq.*

Ths Court held a hearing on the Petitioner's Rule 60.02 motion for costs and damages on November 10, 1998. An order was entered on the motion April 14, 1999. However, being that the case was on appeal, the motion was denied due to lack of jurisdiction.

On June 18, 1999, while the Tennessee Supreme Court was considering Respondents' appeal, the Petitioner filed a claim in the Tennessee Claims Commission for wrongful termination and breach of contract in attempt to place the Petitioner's damages issue in a proper forum.

On May 26, 2000, Respondents filed a motion to dismiss in the Claims Commission on the grounds that the Claims Commission lacked jurisdiction to hear the wrongful termination claim and award damages.

On September 22, 2000, the Claims Commission denied Respondents' motion, ruling that it did have the authority to award "back pay" damages and determine whether the State had breached any contractual agreements.

On July 23, 2002, the parties came before the Claims Commission. The Claims Commission dismissed the Petitioner's claim.

The Petitioner appealed the Claims Commission's Order. On August 8, 2003, the Court of Appeals upheld the Claim's Commission's dismissal, ruling that the Respondents' case was governed by the Tennessee Teacher Tenure law, therefore, the Claims Commission had no jurisdiction to hear the case.

This Court, in its August 17, 1998 Order, remanded this matter to the Tennessee Board of Regents for "further action" in accordance with the order. Once the Tennessee Supreme Court upheld this Court's order, it was incumbent on the Board of Regents to take appropriate action to reinstate the Petitioner and provide any further relief that was warranted. The issue of reinstatement is not before this Court.

Based upon the foregoing, the Petitioner's motion is granted, and the Court ORDERS the Tennessee Board of Regents to take appropriate "further action"

consistent with this Court's August 17, 1998 Order, including calculation and payment of back wages and benefits, plus interest, wrongfully denied the Petitioner. CM

Entered this ___ day of _____, 2005.

/S/ Carol L. McCoy
CAROL MCCOY, CHANCELLOR

APPROVED FOR ENTRY:

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